

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re: SIMMIE EDWARD SMITH

Debtor,

Case No.: 20-30021-KRH
Chapter 13

TOWNEBANK

Plaintiff,

v.

SIMMIE EDWARD SMITH, DEBTOR
JOYCE C. SMITH, CO-DEBTOR
A/K/A JOYCE ANN SMITH
SUZANNE E. WADE, TRUSTEE

Defendants.

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. SECTION
362 AND FROM THE AUTOMATIC CO-DEBTOR STAY OF 11 U.S.C. 1301**

NOW COMES TowneBank ("TowneBank"), by counsel, and moves the Court for relief from the automatic stay pursuant to 11 U.S.C. Section 362, and from the automatic co-debtor stay pursuant to 11 U.S.C. Section 1301, by reason of the following:

1. On February 28, 2008, Stephen E. Smith entered into a Promissory Note, Disclosure, and Security Agreement ("Note") with The Bank of Currituck for the purchase of Property located at 103 Trout Terrace, Grandy, NC 27939 (the "Property"). A copy of the Note is attached as **Exhibit A**.
2. To secure repayment of the Note, The Bank of Currituck has a validly perfected Deed of Trust lien in real property and improvements located at 103 Trout Terrace, pursuant to

Carl A. Eason, Esquire
Counsel for TowneBank
Wolcott Rivers Gates
200 Bendix Road, Suite 300
Virginia Beach, Virginia 23452
bankruptcy@wolriv.com
(757) 497-6633
VSB# 18636

Deed of Trust dated February 28, 2008, which the Property is more particularly described as:

Lot 39, Block C, Section 1, as shown on plat of Walnut Island, recorded in the Currituck County Public Registry in Plat Book 3 at Page 47-A.

A copy of the Deed of Trust is attached as **Exhibit B**.

3. On December 3, 2010, The Bank of Currituck entered into a Loan Assignment Agreement with TowneBank, selling certain personal property and loans to TowneBank. That acquisition included the Stephen E. Smith Note and Deed of Trust.
4. On March 13, 2013, Simmie E. Smith ("Debtor"), Joyce C. Smith ("Co-Debtor"), and Stephen E. Smith entered into a Change in Terms Agreement ("Agreement") with TowneBank for the Property located at 103 Trout Terrace, Grandy, NC 27939, in the original sum of \$59,458.78. A copy of the Agreement is attached as **Exhibit C**.
5. To secure payment of the Note (Change in Terms Agreement), TowneBank has a validly perfected Modification of Deed of Trust ("Deed of Trust") dated March 13, 2013 on the 103 Trout Terrace, Grandy NC property above. A copy of the Deed of Trust is attached as **Exhibit D**.
6. The current outstanding balance (payoff) due, as of January 29, 2020, is \$57,248.47.
7. The value of the Property per Appraisal Report dated January 7, 2020, performed by Jeffrey G. Blount with J.G. Blount & Associates, is \$54,500.00. A copy of the Appraisal is attached as **Exhibit E**.
8. In addition to the first Deed of Trust lien, the Debtor and/or Co-Debtor owe real estate taxes from 2014 to 2019, and utility bills to Currituck County for December 2019 and January 2020. These debts constitute liens against the Property in the approximate amount of \$2,940.33. Accordingly, the total liens approximate \$60,135.72.
9. The Debtor filed for relief pursuant to Chapter 13 on January 2, 2020 and subsequently filed a Chapter 13 Plan (the "Plan").

10. Suzanne E. Wade was appointed Chapter 13 Trustee.
11. The Plan provides for TowneBank to receive pre-petition arrears of \$5,320.00 through the plan and post-petition payments directly by the Debtor.
12. Stephen E. Smith filed for relief pursuant to Chapter 7 on March 8, 2011 and subsequently filed a Statement of Intent listing half (½) interest in the Property, providing for “payments to continue by co-owners”. Stephen E. Smith was granted a discharge under section 727 of title 11, United States Code (Bankruptcy Code).
13. The Debtor and/or Co-Debtor are in default on the aforementioned Note for payments due **October 28, 2017 through January 28, 2020**, in the amount of \$19,259.35, and such further defaults as may accrue during the pendency hereof.
14. The Co-Debtor received consideration from the Property involved herein as signified by the fact her name appears on the Agreement and Deed of Trust of same.
15. TowneBank verily believes none of the obligors occupy the Property.
16. TowneBank has been unable to verify that insurance is currently being maintained on the Property involved herein.
17. By reason of the foregoing, TowneBank's interest is not adequately protected.

WHEREFORE, TowneBank moves the Court for relief from the automatic stay pursuant to 11 U.S.C., Section 362 and from the automatic co-debtor stay pursuant to 11 U.S.C. Section 1301 that the stay of such grant of relief imposed pursuant to the provisions of Rule 4001 (a)(3) of the Bankruptcy Rules be waived and for its fees and costs expended herein.

TOWNEBANK

By: /s/ Carl A. Eason
Of Counsel

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In Re: SIMMIE EDWARD SMITH
(SSN -6675)

620 North Mecklenburg Ave.
South Hill, VA 23970

Debtor,

CASE NO.: 20-30021-KRH
CHAPTER 13

JOYCE C. SMITH
A/K/A JOYCE ANN SMITH
(SSN -9123)

620 North Mecklenburg Ave.
South Hill, VA 23970

103 Trout Terrace
Grandy, NC 27939

NOTICE OF MOTION AND HEARING

TowneBank has filed papers with the Court to obtain relief from the provisions of the automatic stay and co-debtor stay of the Bankruptcy Code with regard to certain property more particularly described in those papers.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

TO THE DEBTOR:

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then within fourteen (14) days from the date of service of this motion, you or your attorney must:

- ☒ File with the court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013-1(H)]. If you mail your request for hearing (or response) to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

Clerk of Court
United States Bankruptcy Court
701 East Broad Street, Suite 4000
Richmond VA 23219-3515

You must also mail a copy to:

Carl A. Eason, Esquire
200 Bendix Road
Suite 300
Virginia Beach, VA 23452

James E. Kane, Esquire
1313 East Cary Street
P.O. Box 508
Richmond, VA 23218-0508

Suzanne E. Wade, Trustee
7202 Glen Forest Drive, Ste. 202
Richmond, VA 23226

TO THE CO-DEBTOR:

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, then within twenty-one (21) days from the date of service of this motion, you or your attorney must:

- ☒ File with the court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013-1(H)]. If you mail your request for hearing (or response) to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

Clerk of Court
United States Bankruptcy Court
701 East Broad Street, Suite 4000
Richmond VA 23219-3515

You must also mail a copy to:

Carl A. Eason, Esquire
200 Bendix Road
Suite 300
Virginia Beach, VA 23452

James E. Kane, Esquire
1313 East Cary Street
P.O. Box 508
Richmond, VA 23218-0508

Suzanne E. Wade, Trustee
7202 Glen Forest Drive, Ste. 202
Richmond, VA 23226

- ☐ Attend a hearing to be scheduled at a later date. You will receive separate notice of hearing. **If no timely response has been filed opposing the relief requested, the court may grant the relief without holding a hearing.**

☒ **Attend the preliminary hearing scheduled to be held on March 4, 2020 at 11:00 a.m. at United States Bankruptcy Court, 701 East Broad Street, Courtroom 5100, Richmond, VA 23219.**

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

Date: January 29, 2020

/s/ Carl A. Eason
Carl A. Eason, Esquire
200 Bendix Road, Suite 300
Virginia Beach, VA 23452
(757) 497-6633
Virginia State Bar No. 18636
Counsel for TowneBank

CERTIFICATION OF SERVICE

I hereby certify that I have this 29th day of January, 2020, mailed or hand-delivered or electronically transmitted a true copy of the foregoing Notice of Motion and Hearing to the parties listed on the attached service list.

James E. Kane, Esquire
Counsel for Debtor
1313 East Cary Street
P.O. Box 508
Richmond, VA, 23218-0508

Suzanne E. Wade, Trustee
Trustee
7202 Glen Forest Drive, Ste. 202
Richmond, VA, 23226

Simmie Edward Smith
Debtor
620 North Mecklenburg Ave.
South Hill, VA, 23970

Joyce C. Smith
a/k/a Joyce Ann Smith
Co-Debtor
620 North Mecklenburg Ave.
South Hill, VA 23970

103 Trout Terrace
Grandy, NC 27939

/s/ Carl A. Eason